



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 02681-99
3 February 2000

HM2 [REDACTED] USN
[REDACTED]
[REDACTED]

Dear Petty Officer [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command (NPC) dated 24 August and 28 October 1999, and a memorandum from the Naval Education and Training Professional Development and Technology Center, dated 1 February 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions, except as they relate to your mark of "2.0" in "Quality of Work" in the contested performance evaluation. They were unable to find the contested evaluation was in reprisal for your having reported unfavorable information that caused your command to be investigated. Given the evidence that you did receive counseling, the Board found unpersuasive the colonel's letter of 12 August 1998, stating the mark in "Quality of Work" was inappropriate because of inadequate counseling. They noted that you may ask NPC to file the colonel's letter in your naval record. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
24 AUG 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: HM2 [REDACTED], USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his performance report for the period 3 May 1997 to 15 March 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire to submit a statement. The member's statement has been received by PERS-311 and was found acceptable for file. The statement is in the process of being filed in the member's digitized record.

b. The member alleges that the report in question was not prepared per the guidelines outlined in reference (a). The member alleges that the data contained in blocks 30 and 31 is false due to him not being counseled at anytime, verbally or in writing, of any shortcomings or deficiencies. The member states that on the date the alleged counseling was performed, he was sick in quarters. The member provides with his petition a copy of the Quarters/Light Duty List form NNMC 0320/8 to support his allegation.

c. The member also feels that his trait marks were lowered in retaliation for having brought much needed attention to unsavory operations at the command.

d. The Commanding Officer, Military Entrance Processing Station (MEPS), Lieutenant Colonel [REDACTED] states in his endorsement to the member's statement that "During this rating

Subj: HM2 [REDACTED] USN, [REDACTED]

period he has received written counseling, which includes a Non-Punitive Letter of Caution, that address his duty performance. Furthermore, he has been verbally advised of his duty performance shortcomings several times during the evaluation period."

e. Counseling on performance is mandatory in accordance with reference (a), Annex C., and may be accomplished in different ways. Based on the information provided with the members petition, we feel that counseling did occur; however, not on the date indicated in block 30 of the report. We feel that an incorrect date does not justify invalidating a report.

f. The report represents the judgment and appraisal authority of the reporting senior for a specific period of time. It is not required to be consistent with previous or subsequent reports.

g. The member does not prove the report to be unjust or in error.

3. We recommend the member's petition be forwarded to the Director, Equal Opportunity Branch, PERS-61 for comment on the member's allegation of retaliation. Should the member's allegation of retaliation be found to have merit, we have no objection removing the "2.0" trait mark in "Quality of Work".

4. We recommend retention of the report in question.

[REDACTED]
for Head, Performance
Evaluation Branch

**DEPARTMENT OF THE NAVY****NAVY PERSONNEL COMMAND****5720 INTEGRITY DRIVE****MILLINGTON TN 38055-0000**

1610

PERS-61/126

28 Oct 99

**MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS**

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
HM2 [REDACTED], USN, [REDACTED]Ref: (a) PERS-00ZCB memo 5420 of 18 OCT 99
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 02681-99

1. Reference (a) requested an advisory opinion in response to Petty Officer [REDACTED] request to remove or modify his evaluation report for the period 3 May 1997 to 15 March 1998. Enclosure (1) is returned.
2. Petty Officer [REDACTED] alleges that the report in question has retaliatory marks and comments. Petty Officer [REDACTED] states he had reported cases of falsification of documents to his superiors that resulted in an investigation, bringing unwanted attention to the command. He believes this resulted in 2.0 marks in the Quality of Work and Teamwork blocks of his evaluation. Petty Officer [REDACTED] also states that the date of counseling documented on his evaluation is incorrect and included documentation that he was out sick during that time period.
3. Petty Officer [REDACTED] requested a special Captain's Mast with the Eastern Sector Commander, the command's Immediate Superior in Command (ISIC) in July 1998. A copy of a memo signed by Petty Officer [REDACTED] reporting senior stating that the 2.0 in Quality of Work is incorrect is provided as supporting documentation. The report in question was a first report at this particular command. The second report, also by the same reporting senior, documented a significant improvement in the marks and the narrative.
4. Petty Officer [REDACTED] does not provide a copy of the

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
HM2 [REDACTED]

investigation or inspection that he refers to in his statement to support his allegations in accordance with reference (b). However, based on the information provided, I recommend the mark of 2.0 in Quality of Work be modified to a 3.0 mark.

[REDACTED]
Director, Professional
Relationships Division
(PERS-61)

SUBJ: NAME [REDACTED] WDC [REDACTED] USA [REDACTED]

REF: A PHONCON MRE [REDACTED] (BCOR) / MR ED WEST
(NETPOTC) OF 01 FEB 00.

AS PER REF A, A REVIEW OF CYCLE 160 IN CASE
OF [REDACTED] PERFORMANCE MARK AVERAGE. THE
PERIOD OF EXAMS USED FOR CYCLE 160 EXAM
WAS 1 JAN 96 TO 31 AUG 98.

DATES USED FROM HIS RECORD

DEC 95 - 15 MAR 96	N0B	LESS 90 DAYS	
16 MAR 96 - 22 AUG 96	3.60		
16 MAR 96 - 02 JAN 97	4.00		
03 MAY 97 - 15 MAR 98	3.60		
			= 3.73

HIS FINAL MULTIPLE WAS 217.08

REQUIRED FINAL MULTIPLE WAS 221.92

DATES USED IF EVAL MAY 97 - MAR 98 REMOVED.

DEC 95 - 15 MAR 96	N0B	
16 MAR 96 - 22 AUG 96	3.60	
16 MAR 96 - 03 MAY 97	4.00	
		= 3.80

HIS FINAL MULTIPLE WITH NEW PMA IS 220.58

REQUIRED FINAL MULTIPLE STILL IS 221.92

ATTN: [REDACTED]